



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1993

Mr. William J. Delmore, III
General Counsel
Office of the Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR93-578

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 20767.

The Harris County District Attorney (the "district attorney") has received a request for the arrest warrant, probable cause affidavit, and police report for Cause No. 536,503 in the 263d District Court of Harris County.² You claim the requested information is excepted from public disclosure by sections 552.101, 552.103(a), (b), and 552.108 of the Open Records Act.³

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²We note that the original request was for the arrest warrant, probable cause affidavit, police report and prosecutor report. Upon clarification the requestor changed the request to the arrest warrant, probable cause affidavit, police report and prosecutor report, or the information given by the police to the district attorney's office. You state that the district attorney does not possess a copy of the arrest warrant or the probable cause affidavit and that the requestor has been so advised. We assume the police incident report, as well as being responsive to the request for the "police report," is intended to be responsive to the request for information given to the district attorney's office by the police.

³We note that you also request reconsideration of the Attorney General Opinion JM-266 (1984) ruling that the district attorney's office is a governmental body subject to the Open Records Act. Because

Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 552.103(a). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

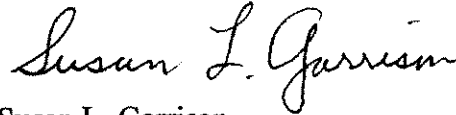
You argue that section 552.103(b) "provides that the State is considered a 'party to litigation of a criminal nature,' for purposes of [section 552.103(a)], 'until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.'" You also contend that "investigatory materials created in anticipation of litigation at any time prior to the running of the statute of limitations or the exhaustion of post-conviction remedies would be accorded a work product privilege of unlimited duration."

Section 552.103(b) is not a separate exception to disclosure. It merely provides a time frame for the section 552.103(a) exception. Open Records Decision No. 518 (1989) at 5. Unless a governmental body has met its burden of showing that litigation is pending or reasonably anticipated under section 552.103(a), section 552.103(b) is not applicable. You state that the defendant in the investigation at issue entered a "plea of guilty, of the felony offense of injury to a child, and was sentenced to confinement in prison for fifteen years." Unless the defendant has appealed the plea or attacked it by writ of habeas corpus or there is evidence that he intends to do so, there is no pending or reasonably anticipated litigation between the state and the defendant. *See generally* Tex. R. App. P. 40(b)(1), 44. In a letter from the requestor dated June 5, 1993 clarifying his original request, the requestor states his intention to file for a writ of habeas corpus. Because you have demonstrated that litigation is reasonably anticipated under section 552.103(a), you may withhold the requested information.

we have already addressed and dismissed your arguments in Open Records Ruling No. 93-213 (1993), we decline to readdress this matter.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/LBC/rho

Ref.: ID# 20767

cc: Mr. Walter Jones
TDCJ-ID No. 527436
Ellis I Unit
Huntsville, Texas 77343
(w/o enclosures)